

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THREE D, LLC D/B/A TRIPLE PLAY)	Appeal Nos. 14-3284, 14-3814
SPORTS BAR AND GRILLE)	
)	
<i>Petitioner/Cross-Respondent</i>)	
)	
V.)	
)	
NATIONAL LABOR RELATIONS BOARD)	
)	
<i>Respondent/Cross-Petitioner</i>)	

**PETITIONER/CROSS-RESPONDENT’S RESPONSE TO THE NATIONAL LABOR
RELATIONS BOARD’S MOTION FOR PUBLICATION OF THE SUMMARY ORDER**

The Motion of the National Labor Relations Board (“NLRB”) for Publication of the Summary Order should be denied. In opposition to the NLRB’s motion, the petitioner/cross-respondent, Three D, LLC d/b/a Triple Play Sports Bar and Grille (“Triple Play”) states as follows:

1. By its own procedural rules, this Court has determined that “When a decision in a case is unanimous and each panel judge believes that no jurisprudential purpose is served by an opinion (i.e., a ruling having precedential effect), the panel may rule by summary order.” CTA2 IOP 32.1.1

2. The Court has granted motions to publish previously unpublished summary orders where the Court was “persuaded that [its] decision may have some precedential value.” See Guan v. Board of Immigration Appeals, 345 F.3d 47, 48 n.1 (2d Cir. 2003); Nicole Rose Corp. v. Commissioner of Internal Revenue, 320 F.3d 282, 283 n.2 (2d Cir. 2003).

3. In the present case, the Court’s summary order has little precedential value, and it would serve no jurisprudential purpose to publish the order.

4. As noted by the NLRB in its motion, the Court's summary order in this case upheld the Board's decision and order against Triple Play issued in the matter of Three D, LLC d/b/a Triple Play Sports Bar and Grille, 361 NLRB NO. 31 (Aug. 22, 2014). In the underlying decision, the Board did not establish any new standards which are applicable to online speech by employees. Nor did the Board make any findings or determinations which were specific to online activity. Rather, in the underlying decision, the Board relied upon the longstanding precedents associated with Linn v. Plant Guards Local 114, 383 U.S. 53 (1966) and N.L.R.B. v. Electrical Workers Local 1229, 346 U.S. 464 (1953).

5. In its Summary Order, this court merely adopted the findings and analysis of the Board. This court did not establish any new standards or apply any law other than that which has already been applied by the Board for more than a half-century. Accordingly, the Court's Summary Order has very little precedential value, and no jurisprudential purpose would be served by publication of the decision.

WHEREFORE, Triple Play respectfully requests that the Court deny the NLRB's Motion for Publication of the Summary Order.

Dated: October 26, 2015
Waterbury, Connecticut

Submitted by Attorney for Petitioner/
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CERTIFICATION

I hereby certify that on October 26, 2015, a copy of the foregoing Opposition was sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

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